

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

ROBERT D. MAWHINEY,

Plaintiff,

v.

WARREN DISTRIBUTION, INC.,

Defendant.

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CASE NO. 8:05CV466

**MEMORANDUM
AND ORDER**

This matter is before the court on the Plaintiff, Robert Mawhiney's, Motion for Extension of Time to File Appeal. (Filing No. 118). The Plaintiff asks for a 90-day extension of time to appeal the Court's June 11, 2007, Memorandum and Order and Judgment. (Filing Nos. 114 & 115).

Fed. R. App. P. 4(a) states that "[i]n a civil case. . . the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered." Rule 4(a)(5) allows the District Court to extend the time to file a notice of appeal if: (1) a party moves no later than 30 days after the time prescribed by Rule 4(a) expires; and (2) the party shows excusable neglect or good cause.

The Plaintiff argues that he needs the extension of time because he requires further surgery on his right hand, and his doctor anticipates a three to four month recovery period. Here, the time for filing the Plaintiff's Notice of Appeal has yet to expire. By filing this motion, the Plaintiff has demonstrated that he currently has the ability to file a timely Notice of Appeal pursuant to Fed. R App. P. 3(c). Therefore, the Plaintiff's motion is denied. After filing the Notice of Appeal, the Plaintiff can request extensions of time with the Eighth Circuit Court of Appeals to address any extensions of time necessary due to the Plaintiff's surgery.

IT IS ORDERED:

1. That the Plaintiff's Motion for Extension of Time to File Appeal (Filing No. 118) is denied; and
2. That the Clerk of Court is directed to send a copy of this Memorandum and Order to the Plaintiff at his last known address.

DATED this 27th day of June, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge